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in the

Supreme Court

of the

United States

October Term, 1975

CASE No. 75-555

COURT REPORTERS OF DADE COUNTY,
Petitioner,

vs.

HONORABLE CIRCUIT JUDGES FOR THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA,
Respondent.

MEMORANDUM OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND THE COURT OF APPEALS, THIRD DISTRICT STATE OF FLORIDA

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CAPITAL PRESS, INC. — 625-7663 — 525-3351

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Respondent, HONORABLE CIRCUIT COURT JUDGES, represents to the Court as follows:

A. The Petition is Untimely

The opinion sought to be reviewed was rendered and filed on November 6, 1974 by the District Court of Appeal of Florida, Third District (Petitioner's Appendix L) on December 11, 1974. The District Court of Appeal denied rehearing (Petitioner's Appendix J).

Petitioner seeks this Court's jurisdiction under the auspices of 28 U.S.C.A. Section 1257(3) but did not file a petition until 302 days after the decision sought to be reviewed was rendered by the highest court of the State of Florida in which a decision could be had.

The Supreme Court of Florida in which Petitioner sought jurisdiction did *not* decline to exercise discretionary jurisdiction, but rather twice held it did *not* have jurisdiction (Petitioner's Appendixes E and F). See also *Armstrong v. City of Tampa* (Fla. 1958) 196 So.2d 407.

Under Florida law, the District Court of Appeal is the highest court from which decision could be had, *Williams v. Florida*, 399 U.S. 78, 26 L.Ed.2d 446, 90 S.Ct. 1893 (1970). See also *Amsin v. Thurston* (Fla. 1958) 101 So.2d 808, 810.

The instant Petition was filed on October 9, 1975, more than 180 days since the opinion was rendered and rehearing denied (28 U.S.C.A., Section 2101(c) and Rule 22 of this Court).

Therefore, it appears that Petitioner's Application for a Writ of Certiorari is out of time and should be denied.

B. Equal Protection is Afforded

1. *Petitioner's Contentions*

Assuming for the sake of argument the Petition is not untimely, there is no issue presented that would warrant this Court's consideration. The gravamen of Petitioner's argument is that the regulation of "the payment of court reporter services performed in all civil and criminal proceedings, including depositions" somehow violates the equal protection provision of the Constitution (Petitioner's Appendix Q). According to Petitioner, the classification is discriminatory, arbitrary and capricious. Court reporters have been selected for regulation, Petitioner contends, rather than people who manufacture the paper or sell typewriters. Other even less compelling examples are cited by Petitioner to show some other class should have been selected for regulation. Then Petitioner argues that there is no rational connection with any state interest. This argument presumes that the state is regulating a business in the "free enterprise system" (court reporting) rather than its court system and the cost to litigants of access to that system.

Further Petitioner argues that:

> "Certainly attendance and deposition copies ordered by private agreement between counsel or parties, and a court reporter are not a subject for control by the court and a regulation thus singling out and so regulating court reporters is not constitutionally allowable. The same certainly may be said insofar as the order seeks to regulate fees for depositions not to be filed in the court." (Petition, p. 14)

2. *State's Interest in its Court System*

The State has a keen interest in its court system and in the costs involved in using that system. *Ortwein v. Schwab*, 410 U.S. 656, 35 L.Ed.2d 572, 93 S.Ct. 1172 (1973). The right to set filing fees, even as to indigents, has been affirmed by this court. *United States v. Kras*, 409 U.S. 434, 34 L.Ed.2d 629, 93 S.Ct. 631 (1973). The state has a strong ability to regulate its court system; combined with its power to regulate businesses operating within the state, the burden to overturn such regulation is a heavy one. In *Nebbia v. New York*, 291 U.S. 502, 78 L.Ed. 904, 54 S.Ct. 505 (1934) this Court held that a state did not violate the Fourteenth Amendment when it fixed the minimum and maximum price of milk. The state's interest in its court system is as vital to the public interest as is the supply of milk.

The use of depositions is provided for in Rule 1.280, Florida Rules of Civil Procedure, General Provisions Governing Discovery, which provides in subsection (a) thereof,

"Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination. . . . " Rule 1.300, Florida Rules of Civil Procedure, provides in section (a) that:

> "Depositions may be taken before any notary public or judicial officer or before any officer authorized by the statutes of Florida to take acknowledgments or proof of execution of deeds or by any person appointed by the court in which the action is pending."

The taking of depositions, the use of depositions, and the persons before whom depositions may be taken are integral parts of the Rules of Civil Procedure. Depositions, under Florida law, are evidence to be used in civil cases and are available in criminal proceedings for the purposes of impeachment. Thus, it is clear that the deposition itself plays an integral part in the entire judicial system. On the face of it, without more, it appears reasonable for the Judges of the Circuit Court to regulate the cost of depositions.

However, that contention gains strength when it is remembered that the costs of depositions are a "court cost" that is recoverable by the prevailing party in either civil or criminal proceedings. Section 57.071, Florida Statutes. In fact, it is specifically provided in Rule 1.310(f)(2), Florida Rules of Civil Procedure, that: "Upon payment of reasonable charges therefor the officer shall furnish a copy of the deposition to any party or to the deponent." Thus, the Florida Statutes and Florida Rules of Civil Procedure specifically require that "reasonable charge" be paid for the

cost of a deposition. Obviously, the Statute and the Rule are interpreted and enforced by the Judges of the Circuit Court, as are all the other laws relating to discovery proceedings.

It is important to point out that depositions as a "product" are not intended to be used for purposes other than court proceedings. General Order No. 5 provides that: "the following court reporter fees are hereby adopted and shall govern the payment of court reporters' services performed *in all civil and criminal proceedings.*" Accordingly, it is not the intent of General Order No. 5 to cover depositions taken in administrative hearings or for any other private purpose but rather the Order pertains only to "civil and criminal proceedings." Those same proceedings are the subject matter of Rule 1.310 with regard to the "reasonable charges therefor" and of Florida Statute 57.071.

Clearly, the use of depositions is as much an integral part of the judicial process as is the use of testimony at trial. Any difference between the two is merely academic insofar as the judicial proceedings are concerned. As a matter of fact, depositions are frequently used in the place of testimony before a court and submitted directly into evidence for that purpose. Thus, in those instances, the use of a deposition is identical in all respects to the transcript of proceedings in the court.

3. *Achievement of a Permissible State Objective*

This court held in *Rinaldi v. Yeager*, 384 U.S. 305, 16 L.Ed.2d 577, 86 S.Ct. 1497 (1966) that legislation may

impose special burdens upon defined classes in order to achieve permissible ends. The traditional test for a denial of equal protection under state law is whether the challenged classification rests on grounds wholly irrelevant to the achievement of a valid state objective. *Turner v. Fouche*, 396 U.S. 346, 24 L.Ed.2d 567, 90 S.Ct. 532 (1970). The order here applies equally to all persons within the class by regulating official and free-lance court reporters. The choice of classification is up to the regulating authority and the Florida court system is entitled to great latitude in making classifications, *Levy v. Louisiana*, 391 U.S. 68, 20 L.Ed.2d 436, 88 S.Ct. 1509 (1968). The object here is clearly to control the cost of litigation which is a laudable objective wholly within the framework of proper court management. Moreover, there is no suspect classification such as race present.

The inferred aim of the Court Reporters in challenging this fee setting Order is to be able to sell transcripts and depositions for whatever the market can bear. It is reasonable for the State to keep a "supply and demand" economy out of its court system. Setting reasonable and uniform rates serves to keep the court system within the reach of her citizens, rich or poor.

C. Conclusion

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,
GREENBERG, TRAURIG,
HOFFMAN, LIPOFF &
QUENTEL, P.A.

By /s/ Alan T. Dimond

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that three true copies of the foregoing Memorandum Opposing Petition for Writ of Certiorari have been mailed to ROBERT ORSECK, ESQ., Podhurst, Orseck & Parks, P.A., 1201 City National Bank Building, 25 West Flagler Street, Miami, Florida 33130, this 29 day of October, 1975, in accordance with Rule 33 of this Court.

GREENBERG, TRAURIG,
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